

## **ARTICLE 13**

### **Layoff, Reduction of Hours, and Recall**

#### **Section 1. Layoff and Option of Reduction of Hours.**

A. UTEA recognizes the right of the Employer to layoff, including the right to determine the extent, effective date and length of such layoffs, for lack of funds, lack of work, or as mandated by law. The Employer shall have the right to determine the positions to be abolished when a layoff or work force reduction is deemed necessary.

- (1) An Executive Order, if issued and approved, reducing departmental spending and/or wage and salary appropriations, shall permit the Employer to lay off unit employees as necessary to comply with such order.
- (2) Department and agency reductions in spending in preparation for lapses in spending authorizations necessary to balance the state's budget, in accordance with instructions to departments approved by the Governor, shall permit the Employer to lay off unit employees.
- (3) It is understood and agreed that Sections 5 and 6 of this Article contain alternatives to indefinite layoff.
- (4) No arbitrator may attach any conditions to the use of indefinite layoffs or options provided below which are not expressly provided in the language of this Article.

#### **B. Application of Procedure:**

- (1) Layoff, bumping, recall, reduction of hours, and temporary layoffs of Bargaining Unit employees shall be exclusively governed by and in accordance with this contract and this Article.
- (2) The expiration of a limited term appointment shall not be considered a layoff for purposes of this Article, except as otherwise provided in this Agreement. An employee with status acquired in a limited term appointment, and separated because of the expiration of that appointment, may be reinstated within three (3) years in any vacancy in any department in the same class and level as that from which the employee was separated. Such reinstatement may precede employment of any person from a promotional list and any person with less seniority on a layoff list. However, in the case of a Continuing State Classified Employee who accepted an appointment to a limited term position, the employee may exercise employment preference at the end of the limited-term appointment. Employment preference begins at the last classification level at which the employee achieved status in an indefinite appointment before accepting the limited-term appointment. Employment preference may be exercised only within the principal department or autonomous agency that appointed the employee to the limited term appointment.

A person who is recalled on a limited term basis is not eligible to exercise employment preference at the end of the limited-term appointment but shall be returned to all recall lists for which the employee is eligible.

When the Employer determines that a limited term vacancy is to be filled, the applicable recall list for that class/level shall be utilized prior to any other method for filling such vacancy.

- (3) **Union Notice of Layoff, Bumps, Reduction of Hours or Temporary Layoffs:** When layoffs, bumps, reduction of hours or temporary layoffs are being planned, the Employer will notify the Union, in writing, of the impending action(s) prior to issuance of any notices to affected employees. Such notice shall be provided no later than thirty (30) calendar days prior to the action being planned. If the Union makes a written request within five (5) calendar days of the notice provided herein, the Employer will meet and discuss the reasons for the action, the details of how it is to be implemented, possible alternatives to solve the problem, and the potential impact upon unit employees caused by the action. Such meeting shall be held within five (5) calendar days of the written request by the Union for such meeting. No layoff, bump, reduction of hours or temporary layoff may be implemented prior to the required notification to the Union or prior to discussion between the Union and the Employer if requested by the Union in accordance with the time frames above.

Concurrent with notices being sent to affected employees, the Employer shall furnish the Union with the name, class title, current layoff unit, and seniority of each employee holding a position scheduled for such action and scheduled initially to be laid off. It is recognized that employee choices and ultimate bumping rights preclude the Employer from providing information beyond that required herein. Whenever the Union has a good faith doubt as to the accuracy of any information provided, it may promptly request and receive a conference with the particular department/agency to receive additional information or to correct agreed-upon errors. As soon as feasible, or no later than twenty (20) calendar days upon request from the Union, after the completion of such actions, the Union shall be entitled to receive a list of such actions. Layoff from state employment shall be the term applied to an employee who is out of a job by virtue of being laid off or bumped and who has elected to be laid off, or has exhausted or has no bumping rights.

## **Section 2. Voluntary Layoffs.**

The parties agree to support any necessary change in rule or law to make it possible for a more senior employee to voluntarily agree to accept layoff for a minimum period of three (3) months without loss of eligibility for unemployment compensation. The parties also agree that any additional agreement reached between them during the term of this contract regarding Employer and employee rights and responsibility in the event voluntary layoffs are used shall become incorporated as an appendix to this Agreement.

Before any layoff of a unit member is implemented, the Employer agrees to first seek volunteers for layoff from among employees in the classification and at the work location where the layoffs are planned to occur. The Employer further agrees that it shall consider such layoffs as normal (involuntary) layoffs for purposes of paying unemployment compensation benefits, and shall not contest such employees' right to collect unemployment benefits.

### **Section 3. Voluntary Reduction in Hours.**

Nothing in this Article shall prohibit the Employer from granting an individual employee request to reduce his/her hours, consistent with operational needs.

### **Section 4. General Layoff Procedure.**

- A. Selection of Positions: When the Employer determines that a general (indefinite) layoff is to take place, the Employer shall determine the position(s) in which services are to be reduced and which are to be abolished. No obligation exists to select positions for elimination on the basis of the incumbents' seniority.
- B. Individual Layoff Notice: An employee occupying a position identified in accordance with Subsection A above shall have the right to either accept layoff from state employment or, as permitted by his/her seniority, to bump to another position for which he/she is qualified in accordance with this Section. An employee occupying a position designated for layoff, and an employee who may or will be bumped from his/her position as a result of such layoff, shall be entitled to receive fifteen (15) calendar days forenotice by first class mail from the Employer of such fact.
- C. Definition:
  - (1) Seniority: For purposes of layoff, bumping and recall in Bargaining Unit positions, seniority shall be as defined in Article 12, Section 2, Bargaining Unit Seniority.
    - a. Ties in Seniority: In the event two (2) or more employees are tied in seniority, seniority for purposes of breaking the tie shall be determined by length of continuous service at the current level and any higher level(s) and then at successively lower levels of service. Ties in seniority which cannot be resolved on the basis of seniority in accordance with this Section shall be resolved by reference to the last four digits of the employee's identification number with the highest being deemed as the most senior.
    - b. Union Officials: For purposes of this Article, the following named Union officials shall be considered more senior than any other employee in his/her current class and level and layoff unit, but only during the employee's term of office, and subject to the limitations stated below:  
  
Union President;  
Statewide Grievance Chairperson;  
One Chief Steward in each of fourteen (14) designated areas.

Not more than one (1) employee in any layoff unit shall be accorded such greater seniority status at any one time. No employee shall be accorded such greater seniority status until thirty (30) calendar days after written designation has been provided to the employee's Appointing Authority by the Union President or Secretary. In no case shall a new or changed designation be effective if it occurs after a layoff notice has been issued and it would alter such layoff or the bumping pattern.

- c. Excluded Managerial, Supervisory, Confidential and Eligible Non-Exclusively Represented Employees: An excluded supervisory, managerial or confidential or an eligible non-exclusively represented employee who formerly achieved status in or satisfactorily completed a probationary period in a class and level currently assigned to the Bargaining Unit, or in a class which was allocated through bench marking to a class and a level in the Bargaining Unit, shall have contractual seniority for purposes of layoff, bumping and recall in this Bargaining Unit.

An excluded employee who moved to such excluded employment prior to January 13, 1983 shall retain all seniority earned up to January 13, 1983, and thereafter up to 1040 continuous service hours in such non-Unit employment. An excluded employee who moves to such excluded employment on or after January 13, 1983 shall retain all continuous service for purposes of seniority earned up to the effective date of such excluded employment, and thereafter up to 1040 continuous service hours in such excluded employment.

- d. Non-Status Employees: An employee who has not achieved status in any class or level in the state classified service shall be considered less senior, regardless of continuous service hours, than any other employee in the non-statused employee's current class and level and layoff unit, if such other employee has achieved status in at least one classification in the state classified service.
- e. Reinstated Employees: If a discharged employee is reinstated by an Arbitrator pursuant to this contract, and would have been laid off during the period of separation but for the discharge, the employee shall be credited with only the seniority he/she would have accrued, but for the discharge, up to the effective date of layoff, and the fifteen (15) day notification period shall be waived in such circumstances.

- (2) Layoff Unit: A layoff unit shall be as provided in Appendix D of this Agreement, and includes all Bargaining Unit positions within a Department.

C. Bumping Procedure:

- (1) Bumping Rights: An employee scheduled for layoff or due to be bumped by a more senior employee shall have the right to either accept layoff or to bump laterally into the least senior Bargaining Unit position, for which he is qualified, in the employee's current class and level in the layoff unit.

Except as provided in Appendix D of this Agreement, if the employee does not have sufficient seniority or lacks the qualifications to bump to the least senior position in the employee's current class and level in the layoff unit, the employee shall have the right to bump to the least senior position at the next and successively lower levels within his/her class series, provided the employee has greater seniority than the employee occupying such least senior position and that the employee seeking to bump possesses the necessary qualifications.

As an alternative to bumping to a lower level in his/her current class series, at the point where the employee could retain a higher base rate of pay an employee may bump into a position in the layoff unit in a former class series at or below any level at which the employee had achieved status or had satisfactorily completed a probationary period, provided the position is in the Bargaining Unit, and the employee seeking to bump is more senior and is qualified to perform the duties. This alternative shall not be interpreted to permit bumping to a higher base pay rate.

For purposes of this Article, an employee scheduled for layoff may bump into a vacancy which the employer intends to fill or, in the absence of such a vacancy, bump into the position occupied by the least senior employee as defined by Subsection C(1) above. The term "qualified" means able to perform the duties of the position within fifteen (15) calendar days.

As a result of bumping downward an employee shall not earn more than the maximum base rate of the lower level class bumped into or more than the base rate previously earned in a higher level class from which the employee bumped. When an employee bumps downward, the employee shall be paid at that step in the lower pay range which credits the service in the higher level range(s) to the step at which the employee was paid when promoted from the lower level.

Within seven (7) calendar days of receipt of notification of layoff (or being bumped), the employee shall notify the appointing authority of his/her decision to either accept layoff or exercise the bumping option provided in this Article. Such notice shall be in writing.

- (2) Exercise of Bumping Rights by Employment Type: It is understood that employees will exercise bumping rights only as indicated below:

- a. Full-time employees first displace the least senior full-time employee; the least senior full-time employee is then given the option of displacing the least senior part-time employee or of accepting layoff; then of displacing the least senior permanent-intermittent employee or of accepting layoff.
- b. Part-time employees first displace the least senior part-time employee; then the least senior part-time employee is given the option of displacing the least senior permanent-intermittent employee or of accepting layoff.
- c. Permanent-intermittent (PI) employees first displace the least senior PI employee; the least senior PI is given the option of displacing the least senior part-time employee or of accepting layoff.

It is also understood that the attributes of full-time, part-time, or intermittent employment accrue to the position and not the employee. Therefore, by way of example, if an employee bumps from a full-time position to a part-time position, that employee will work part time.

- (3) Except as provided in Section 4C (1)c of this Article for excluded employees, and non-exclusively represented employees, employees in this Bargaining Unit shall not be entitled to bump into a position outside of this Bargaining Unit, and employees outside of this Bargaining Unit shall have no right to bump into a position in this Bargaining Unit, unless the Union, the Employer, and the other bargaining agent for such positions outside the Bargaining Unit, in their respective discretions, enter into an agreement to permit such inter-Unit bumping, but then only in accordance with the terms of such tri-lateral agreement. Nothing herein shall be construed as an obligation for either the Employer or the Union to enter into such agreement with any party who is not a party for this Agreement. No employee covered by this Section shall be allowed to fill a vacancy in the Bargaining Unit except in accordance with the provisions of this Section or in accordance with Article 16, Assignment and Transfer, of this Agreement.

E. Seniority Exceptions in Layoffs:

The Employer may lay off, bump, reassign and/or recall out-of-line seniority because of:

- (1) Selective Certification requirements approved by the Civil Service Commission;
- (2) Maintaining and administering an affirmative action program in accordance with applicable law and when approved in advance by the State Personnel Director.

The exceptions listed in (1) above shall only be made where there is a valid occupational requirement and no alternative exists for preferring the less senior employee.

The Appointing Authority shall give the Union concurrent written notice when it requests approval from the Civil Service Commission for selective certification.

The Employer shall give notice of such intent to the Union and, in accordance with Civil Service Commission Rules and Regulations, shall negotiate with the Union about the impact of such determination and/or discuss alternatives thereto. No department shall implement Subsection (2) above without the involvement and agreement of the State Employer.

### **Section 5. Reduction of Hours.**

Nothing in this Agreement shall preclude the Employer from offering employees the option of a voluntary reduction of hours, which may be accepted at the discretion of the employee.

### **Section 6. Temporary Layoffs - Employer Option.**

A. Application of Temporary Layoffs: Temporary layoffs may be used for situations involving:

- (1) Unanticipated losses of funding which the department or agency does not expect to obtain or make up within the temporary layoff period. Issuance of a Governor's Executive Order approved by the Legislature shall be evidence of unanticipated loss of funding. Losses of or reductions in federal funds, restricted state funds, bond sales or any other source of state revenues shall also qualify as unanticipated losses of funding under this section; or
- (2) Temporary lack of work, equipment, or materials due to circumstances or events beyond the Employer's control; or
- (3) Natural disaster, lack of utilities or civil disruption that, in the judgment of the Employer, makes premises at a work site inaccessible or unusable; or
- (4) Other circumstances or events which the parties agree during the term of this Agreement warrant a temporary layoff.

B. Implementation: Temporary layoff shall not exceed six (6) calendar days per fiscal year. In such cases employees shall be laid off by inverse seniority order within class and level and layoff unit or, in a circumstance where not all work sites in a layoff unit are involved, by inverse seniority order within class and level and work site. However, where the Employer determines to temporarily lay off all Bargaining Unit employees in a class and level in a layoff unit, it may do so in the following manner:

- (1) The cumulative period per employee may not exceed six (6) calendar days per fiscal year;

- (2) All employees in a class and level shall be laid off in approximately equal numbers for an equal number of days; and
  - (3) Such sequential layoff days shall be on successive work days.
  - (4) Employees shall continue to accrue benefits and seniority during such temporary layoff.
- C. Waiver: An employee who is temporarily laid off shall not be entitled to any leave balance payoffs, to bump to any other position, nor to be placed on any recall list or be recalled to any position other than the one from which the employee was temporarily laid off.

In a circumstance where temporary layoff is being used for a reason other than loss of funding, fifteen (15) calendar days fore notice to the employee shall not be required, but the maximum fore notice possible under the circumstances shall be required.

## **Section 7. Recall Lists.**

A. Definitions: For purposes of this Article, the following definitions shall apply:

- (1) The Primary Class is the class and level from which an employee is initially laid off or bumped.
- (2) The Secondary Class is a class and level, other than the primary class in which the employee has achieved status or has satisfactorily completed a probationary period, and any lower level class in that series.
- (3) The Layoff Unit Recall List is a list, by class and level, of each employee who has been laid off or bumped from a position in the layoff unit.
- (4) The Departmental Recall List is a list, by class and level, of each employee who has been laid off or bumped from a position in the department.
- (5) The Statewide Recall List is a list, by class and level, of each employee who has been laid off or bumped from a position in the State Classified Service.

B. Construction of Lists: Layoff Unit, Departmental and Statewide Recall lists shall be maintained by the Employer by seniority for each class and level within the Bargaining Unit. Each employee who is laid off from state employment, or who bumps to a lower level within his/her current series, or to the same or lower level in a formerly held class series, shall have his/her name placed upon the Layoff Unit Recall List for the class and level from which the employee has been laid off or bumped (Primary Class).



In addition, the laid off (or bumped) employee shall have his/her name placed upon the Layoff Unit Recall List for a Secondary Class, in seniority order.

In addition, the laid off (or bumped) employee shall have his/her name placed upon the Departmental Recall List, in order of seniority, for the Primary and any Secondary Class for which he/she is eligible, for each layoff unit in the department at which he/she will accept recall to employment.

In addition, the laid off (or bumped) employee shall have his/her name placed upon the Statewide Recall list, in order of seniority, for the Primary Class and any Secondary Class for which he/she is eligible, for each County to which he/she will accept recall to employment.

The employee's name will be placed on applicable recall lists upon the return of the required form(s) to the Appointing Authority.

An employee may delete his/her name from any Recall List upon which he/she has requested to be placed, without penalty, at any time prior to being recalled from such list, by giving written notice of such request to his/her Appointing Authority. Similarly, without penalty, the employee may also delete a layoff unit or county from the respective Departmental or Statewide Recall List, to which he/she has requested his/her name be placed.

- C. Recall from Layoff: The provisions of this subsection shall be applied subject to the exceptions in Section 4E of this Article, and subject to the employee being qualified.

Notice of recall shall be sent to the employee at his/her last known address by registered or certified mail.

When the Appointing Authority intends to recall employees, the Employer shall recall the most senior, qualified employee who is on the Layoff Unit Recall List for the class and level in which the vacancy exists, (regardless of whether the class and level is the employee's Primary or Secondary Class). If the most senior qualified employee does not accept the recall, the employer shall then recall the next and successively less senior qualified employee on the list.

If no qualified employee is on such Layoff Unit Recall List, the Employer shall recall the most senior qualified employee from the Departmental Recall List, for the class and level, who has designated the layoff unit in which the vacancy exists as one to which he/she will accept recall.

If the most senior qualified employee does not accept the recall, the Employer shall then recall the next and successively less senior qualified employee on such list who has designated that layoff unit.

If no qualified employee is on such Departmental Recall List, the Employer shall recall one of the three most senior qualified employees from the Statewide Recall List, for the class and level, who have designated the County in which the vacancy exists as one to which he/she would accept recall.

Recall lists shall not be combined with referral lists, or with promotional or open competitive registers.

The employee's right to recall shall exist for a period of up to six (6) years from the date of layoff unless forfeited in accordance with Subsection D below.

If there is an error in the administration of the Recall Lists which leads to improper recall, such recall shall be corrected.

D. Removal of Names from Recall Lists: If an employee fails to respond within seven (7) calendar days from the date of receipt of his/her recall notice, the employee's name shall be removed from the Recall List used to make that recall. In addition, the employee's name shall be removed from recall lists as provided below:

(1) An employee who accepts or refuses recall to his/her Primary Class in the layoff unit from which he/she was originally laid off shall be removed from all recall lists.

(2) An employee who does not accept recall to his/ her Primary Class in a different layoff unit or different county shall be removed from that recall list.

(3) An employee who accepts recall to his/her Primary Class in a layoff unit different from the one from which he/she was laid off shall be removed from all recall lists except for the Primary Class for the layoff Unit from which he/she was laid off.

(4) An employee who refuses or accepts recall to a Secondary Class shall be removed from the Secondary Class recall list for the layoff unit in which the recall was offered.

(5) An employee who refuses or accepts recall to a Primary Class or Secondary Class from a Statewide Recall List shall be removed from such list.

Note: An employee's name shall not be removed from a Layoff Unit Recall List if the employee refuses recall because he/she is medically disabled or on active military duty, and produces satisfactory certification of such fact to the Employer.

E. The Employer also agrees to provide the Union, upon quarterly request, with copies of the layoff unit, departmental and statewide recall lists for Bargaining Unit classes.

## **Section 8. Temporary and Other Recall.**

Employees laid off from State employment may designate agreement to be recalled on a temporary basis (not to exceed sixty (60) calendar days) to a Primary or Secondary

Class in his/her layoff unit. Temporary recall shall be on the basis of the most senior qualified employees designating such agreement. Refusal of such recall shall cause the employee to be removed from the temporary recall list, but such removal shall not affect the employee's place on a permanent recall list.

It shall be the policy and practice of the Employer to recall full time employees laid off from State employment to less than full-time positions, if such employees are willing to accept less-than full-time work, before hiring any less-than full-time employees.

#### **Section 9. Layoff and Recall Information to the Union.**

The Employer agrees to provide the Union with copies of relevant portions of seniority list(s) which are used to determine which employees are to be laid off. Copies of all lists covered in this Section, as well as any additions, deletions, or alterations, will be forwarded to UTEA within seven (7) days following notice to employees of layoff or within seven (7) days following any additions, deletions or alterations.

#### **Section 10. Coordination of Recall.**

Recall shall be on the basis of the contractual definition of seniority. Employees laid off (or bumped) prior to the January 13, 1983 whose seniority recalculation would have the effect of making them more senior than an employee still working in the class and level shall not be entitled to displace the employee still working.

Nothing in this Section is intended to preclude normal recall of such employees.

#### **Section 11. Annual Leave Restoration.**

An employee who has been laid off from state employment, and whose annual leave balance has been paid off, who is later recalled, may elect to "buy back" annual leave in accordance with the provisions of Article 25, Section 2H, Annual Leave Buy Back.